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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,827	08/01/2003	Robert P. O'Sullivan	0139 0001	1705

720 7590 12/01/2004

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EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/631,827

Applicant(s)

O'SULLIVAN, ROBERT P.

Examiner

Luan K Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/1/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fink et al. (5,715,968; hereinafter Fink'968). Fink'968 discloses a basket/box (2) comprising an elongated hollow base (10, 12, 20) with one of the sides (12) of the base being indented (18) inwardly toward the interior of the hollow base, a handle (44, 54) disposed upwardly from the hollow base and at least one support (52) for the handle extending upwardly between the base and the handle. The handle is parallel to the base and extends in a longitudinal direction and the hollow base comprises a plurality of holes. As to claim 12, the handle comprises two supports (52) and the supports having an "A" configuration with hollow interior (Figure 2). The basket/box of Fink'968 is inherently capable of holding tool.

3. Claims 1, 2, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Flink (6,039,205). Flink discloses a basket/box (10) comprising an elongated hollow base (18-20) with one of the sides (18) of the base being indented inwardly toward the interior of the hollow base, a handle (40) disposed upwardly from the hollow base and at least one support (36, 38) for the handle extending upwardly between the base and the handle. The handle is parallel to the base and extends in a longitudinal direction and the hollow base comprises a plurality of holes. The basket/box of Flink is inherently capable of holding tool.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 5, 7-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink et al. (5,715,968; hereinafter Fink'968) in view of Peebles (3,463,353) or Ernst et al. (4,125,207; hereinafter Ernst'207). Fink'968 discloses the basket/box (2) as above having all the limitations of the claims except for a second handle and at least one handle support being disposed at an elevation lower than the first handle. Peebles shows a container/box (10-14) comprising a base, a first handle (32) disposed upwardly from the base with at least one support (30) for the handle and a second handle (lower 32) and at least one handle support (30) disposed at an elevation lower than the first handle (Figures 1-3). Ernst'207 teaches a container/box (10) comprising a base, a first handle (20) disposed upwardly from the base with at least one support for the handle and a second handle (26) and at least one handle support disposed at an elevation lower than the first handle (Figures 1-2). It would have been obvious to one having ordinary skill in the art in view of Peebles and Ernst'207 to modify the basket/box of Fink'968 so the box comprises for a second handle and at least one handle support disposed at an elevation lower than the first handle to facilitate carrying the box by different height of the user. Regarding the size of the box or the handles, it would have been obvious to one having ordinary skill in the art in view of Fink'968 as modified to modify the box or the handles so the box or the handles comprises the size as claimed because such a modification would have involved a mere change

Art Unit: 3728

in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Official Notice. The basket/box of Fink'968 as modified fails to show a flexible rod being disposed within the base. Official Notice is taken of the old and convention practice of providing a box for holding a flexible rod. It would have been obvious to one having ordinary skill in the art in view of Official Notice to modify the box of Fink'968 so it includes a flexible rod and the base is used to carry the rod to allow the base to carry different types of tool.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
November 28, 2004



Luan K. Bui
Primary Examiner